

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

**CORNELIUS V. HOSCH,**

**Plaintiff,**

**v.**

**BAE SYSTEMS INFORMATION  
SOLUTIONS, INC.,**

**Defendant.**

**Case No.: 1:13-cv-00825-AJT-TCB**

**REPLY IN SUPPORT OF PLAINTIFF’S MOTION FOR SANCTIONS FOR  
DEFENDANT’S FAILURE TO COMPLY WITH THIS COURT’S DISCOVERY ORDER**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37(H), Plaintiff Cornelius V. Hosch (“Plaintiff” or “Hosch”), by and through counsel, has moved this Court to sanction Defendant BAE Systems Information Solutions, Inc. (“Defendant” or “BAE”) for failure to comply with this Court’s December 6, 2013 order to produce BAE’s contract with the government regarding Counter-IED intelligence. This Court ordered BAE to produce the contract at issue in this case, but BAE has failed to produce it. Instead, BAE continues to justify its non-compliance and improperly attempts to limit the Court’s December 6, 2013 Order without any basis. Hosch seeks an order requiring BAE to turn over the contract and to pay all fees associated with the motion to compel, the hearing on the motion to compel, and this motion for sanctions, and all other sanctions this Court may deem necessary and proper.

**I. THIS COURT ORDERED DEFENDANT TO PRODUCE THE CONTRACT AND BAE HAS FAILED TO PRODUCE IT.**

This Court’s order granting in part Plaintiff’s motion to compel and ordering BAE to produce the entire contract at issue in this case is clear.

THE COURT: Okay. So, why does he need the whole contract if he has already got part of at least, or I assume the relevant part?

MR. CARTER: Well, that's just it, I don't think we do have the relevant part. We have – he testified that while at BAE he had the relevant part, but we do not have the contract with the billing categories, the charges, those kinds of things.

THE COURT: Okay, I'm going to make you produce that and be subject to counsel and just the plaintiff's eyes only, no one else, unless you have an expert.

*See Ex. A at 12.* No reasonable person could conclude from this order that BAE had anything less than a comprehensive obligation to produce the contract that has not yet been produced by BAE to date. This Order demands the production of the entire contract at issue in this case and at a minimum the relevant portions that include the billing categories and pricing information to show that BAE was engaging in timecard and billing fraud. BAE's position is that Hosch had access to the Statement of Work and since Hosch produced that document already in discovery, that is all that BAE needed to confirm.

To avoid any confusion on BAE's obligation to produce the contract, this Court further clarified BAE's obligations when responding to BAE's excuse that the DIA would have to approve the production.

MS. BERTRAM: The only issue is DIA may itself impose some restrictions. So, we'll need to see what –

THE COURT: Well, I've got an order that I'm going to enter –

MS. BERTRAM: Right

THE COURT: -- that says you have to produce it.

MS. BERTRAM: Right.

THE COURT: So, it doesn't matter what they think

MS. BERTRAM: Okay.

THE COURT: Okay.

*See Ex. A at 12-13.*

This Court clarified BAE's obligation even a third time.

THE COURT: So, as to your motion to compel, it's granted in part as to the 30(b)(6) and denied in part.

MR. CARTER: And granted in part with respect to the contract?

THE COURT: Yes.

MR. CARTER: Thank you.

*See* Ex. A at 14.

Despite this clear Order from this Court, BAE refuses to produce the contract at issue and even seeks to place the onus of its obligation to this Court on Hosch. *See* Ex. F to Def.'s Opp'n to Pl.'s Mot. for Sanctions. In Ms. Bertram's letter, BAE insists Hosch deleted the relevant portion of the contract to which he had access. *Id.* First, there is no evidence produced to date that that is indeed the case and BAE's accusation of the same is dishonest. Hosch testified that he did not even have administrative access to the Shared Drive on which he accessed the contract and thus could not delete it. Hosch Dep. Tr., Ex. B at 77-80. Second, even if Hosch could delete his local access to the contract (which he did not), surely BAE has a copy of the contract in a location other than the location accessed by Hosch in Afghanistan. BAE admitted it has possession of the relevant portions of the contract when it sought to excuse its already-contemplated lack of compliance with the Court's Order by blaming its inability to produce it on the DIA. *See* Ex. A at 12-13. BAE noted during the hearing that Hosch had "online access to what he characterized as the entire contract" but that "we have to get authorization from DIA to produce that contract." Ex. A at 12. BAE also recognizes Hosch had access to the entire contract via his military computer. Decl. of Connie Bertram, Ex. A at 186-87. Third, BAE asserts that Hosch himself produced the portion of the contract to which he had access. Once again, the Court unequivocally ordered BAE to produce the parts of the contract that which are not included in the brief Statement of Work produced by Hosch. *See* Ex. A at 12-13. The Court obviously ordered BAE to produce something and it is not sufficient for BAE to simply confirm that Hosch's produced version of the Statement of Work is indeed the right one. It is clear that

the remaining portions of the contract are in BAE's possession, custody, or control, but that BAE refuses to produce it. The pricing information, the billing categories, and the like are all excluded from the Statement of Work and have not been produced by either party in this litigation.

**II. PLAINTIFF MET AND CONFERRED WITH DEFENDANT IN GOOD FAITH REGARDING DEFENDANT'S OBLIGATIONS PURSUANT TO THE ORDER.**

BAE continues to refuse to produce the relevant portions of the contract despite meeting and conferring in good faith. When Hosch filed this motion for sanctions, Counsel for BAE and Counsel for Hosch had already exchanged multiple letters and emails addressing BAE's obligations under this Court's Order. BAE's position that it was not going to produce the contract was clear since the Court's order was issued. On December 12, 2013, Counsel for BAE and counsel for Hosch discussed via email correspondence BAE's obligation to produce the contract as ordered. *See* Ex. A to Pl.'s Mot. for Sanctions. On December 13, 2013, prior to a deposition of a fact witness, Hosch's Counsel discussed in person whether BAE had any intention to comply with the Court's Order. *See* Ex. B to Pl.'s Mot. for Sanctions. Then on December 20, 2013, Plaintiff's Counsel again sought clarification as to why BAE continued to refuse to produce the contract. *See* Ex. C to Pl.'s Mot. for Sanctions. BAE failed to respond on that issue. *See* Ex. C to Pl.'s Mot. for Sanctions. On the day Hosch filed this motion for sanctions, as a courtesy to BAE, the undersigned sent Counsel for BAE an email indicating his intent to file a motion for sanctions unless the contract was produced. BAE could have indicated its intent to produce the contract on the following Monday or that BAE required additional time to comply. Set in its position to ignore the Court's Order, BAE instead responded with personal attacks and false accusations. *See* Ex. D to Pl.'s Mot. for Sanctions. It was made even clearer to Plaintiff that Defendant did not intend to produce the contract.

Hosch was correct in filing this motion for sanctions because since filing this motion BAE has continued to refuse to comply with this Court's order. BAE has drafted two additional letters and the parties discussed the matter via telephone. During these exchanges BAE continued to ignore the Court's Order and sought to blame Hosch for its own failure to comply. From this Court's Order on December 6, 2013 until now, Defendant has refused to produce the contract and only sanctions will incentivize Defendant to fulfill its obligations to this Court and to Plaintiff.

### **III. SANCTIONS ARE AN APPROPRIATE REMEDY FOR DEFENDANT'S CLEAR VIOLATION OF THIS COURT'S ORDER**

BAE's disregard for this Court's order warrants the imposition of sanctions against Defendant. This Court has "nearly unfettered discretion" in determining whether to issue sanctions. *See SunTrust Bank v. Mohsen Moslehi Nik*, 2012 WL 1344390 at \*2 (E.D. Va. 2012) (Buchanan, J.) (citing *Hinkle v. City of Clarksburg, W. Va.*, 81 F.3d 416, 429 (4th Cir. 1996)). After exercising that discretion and determining that sanctions are appropriate, this Court may consider four factors in determining what level of sanctions to impose: (1) whether the non-complying party acted in bad faith; (2) the amount of prejudice that noncompliance caused the adversary; (3) the need for deterrence; and (4) whether less drastic sanctions would be effective.<sup>1</sup> These four factors weigh in favor of imposing sanctions against Defendant.

As to the first factor, BAE has acted in bad faith. As noted above, BAE never really intended to comply with this Court's order. BAE's position before and after this Court's order has not changed. Despite never intending on producing the contract and never changing its

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<sup>1</sup> BAE asserts that these four factors must be met for *any* sanctions to be imposed. That is inaccurate. These four factors are used rather to determine "what sanctions to impose under Rule 37" and not whether sanctions are appropriate at all. *See Colquitt v. Fairfax Cnty. Pub. Schs.*, 2012 WL 3648058 at \*3 (E.D. Va. Aug. 3, 2012) (Buchanan, J.) (quoting *Anderson v. Found. For Advancement, Educ. & Employment of Am. Indians*, 155 F.3d 500, 504 (4th Cir. 1998)).

position, BAE continues to insist the parties meet and confer. The purpose of meeting and conferring is to try to reach an agreement and is not an opportunity for one party to abuse the process and seek to delay a motion for sanctions as long as possible. BAE's willful disobedience of the Court's order is evidenced by BAE's continual refusal to produce the contract despite Hosch's repeated demands and multiple attempts at meeting and conferring. Even after filing this motion for sanctions, BAE refused to comply with this Court's Order. *See* Ex. F to Def.'s Opp'n to Pl.'s Mot. for Sanctions. Defendant even seeks to blame Plaintiff for Defendant's inability to produce the contract. *See* Def.'s Opp'n to Pl.'s Mot. for Sanctions. As to the second factor, Plaintiff has been unduly prejudiced by Defendant's refusal to produce the contract. Plaintiff has a right to all the documents he used to engage in protected activity. By not producing the contract, Defendant would unjustly limit Plaintiff in being able to bring his claim before a jury to show that he engaged in protected activity – a critical element of his retaliation claim.

As to the third and fourth factors, Defendant is willfully ignoring the order of this Court to produce the contract at issue in this case. This Court must impose sanctions sufficient to deter Defendant and Defendant's Counsel from further ignoring clear and unequivocal orders of this Court. Defendant has also abused the meet and confer process when it continued to demand that Plaintiff meet and confer when for a whole month the parties exchanged multiple letters and emails and Defendant never deviated from its refusal to comply with this Court's order. Even after Plaintiff notified Defendant of his intention to file this motion for sanctions because of Defendant's refusal to produce the contract, Defendant reemphasized its position and insisted it did not have to comply with this Court's order. Sanctions are required as they are here when Defendant's noncompliance is blatant.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court GRANT Plaintiff's Motion for Sanctions for Defendant's Failure to Comply with this Court's Discovery Order, and require the Plaintiff to provide an accounting for his fees and costs within five (5) days. In addition, or in the alternative, Plaintiff respectfully requests that this Court award Plaintiff an adverse inference instruction against BAE or disallow BAE from opposing Plaintiff's factual presentation of what the contract at issue in this case provides.

Cornelius V. Hosch  
*By Counsel*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of January, 2014, a true and correct copy of the foregoing Reply in Support of Plaintiff's Motion for Sanctions for Defendant's Failure to Comply with this Court's Discovery Order was served with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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	:	
CORNELIUS V. HOSCH,	:	
Plaintiff,	:	
	:	
-vs-	:	Case No. 1:13-cv-825
	:	
	:	
BAE SYSTEMS INFORMATION	:	
SOLUTIONS, INC.,	:	
Defendant.	:	
	:	
-----	:	

HEARING ON MOTIONS

December 6, 2013

Before: Theresa C. Buchanan, Mag. Judge

APPEARANCES:

Adam A. Carter, Counsel for the Plaintiff

Connie N. Bertram, Counsel for the Defendant

1           NOTE: The case is called to be heard at 10:19 a.m.  
2 as follows:

3           THE CLERK: Hosch versus BAE Systems Information  
4 Solutions, Inc., case 13-cv-825.

5           MR. CARTER: Good morning, Your Honor.

6           THE COURT: Good morning.

7           MR. CARTER: Adam Carter with The Employment Law  
8 Group on behalf of Vince Hosch.

9           MS. BERTRAM: Good morning, Your Honor.

10          THE COURT: Good morning.

11          MS. BERTRAM: Connie Bertram for defendant BAE  
12 Systems. And I am here with Christine Roth, who is with BAE  
13 Systems.

14          THE COURT: All right. Let's deal first with the  
15 plaintiff's motion to compel. Do you have anything to add to  
16 that?

17          MR. CARTER: Just that my client has the burden, Your  
18 Honor, of showing that he has a good faith belief when he  
19 brings his concerns forward, and it helps to know that he's  
20 correct.

21          THE COURT: Well, no, that's not the issue. I mean,  
22 the issue is what he knew at the time, and was that a  
23 reasonable basis for his belief. Not whether you can prove  
24 that that was correct or that there was more wrongdoing on  
25 behalf of the defendant or anything else.

1 MR. CARTER: I don't disagree with you, he doesn't  
2 have to be correct.

3 THE COURT: Right.

4 MR. CARTER: My point is that when you want to show  
5 intent of the defense to retaliate, when he is correct, they  
6 have greater reason to retaliate.

7 That's the point, is that when I get access, if I can  
8 show the contract was -- he was right about the contract, he  
9 was right about the timecards, he was right about the billing,  
10 it's not just what he knew, that's part of it, but then you  
11 flip it around and you ask, what is -- I have to show intent of  
12 the defendant to retaliate. And when I do that -- or if I --  
13 if they are correct, then they have a greater motive to  
14 retaliate.

15 So, that's the -- that's the broad view. The more  
16 narrow with respect to each of these requests is on these  
17 requests for admissions, the objection was that I had to make  
18 some kind of a showing. And I just didn't understand what that  
19 meant.

20 When am I supposed to make that showing? When is  
21 this supposed to happen during discovery? I propound discovery  
22 requests and I think that they should be answered.

23 And then with respect to the 30(b)(6) witness,  
24 quickly. The point there is that I propounded by deposition  
25 notice. Defense counsel propounded objections. We talked

1 about some of them. We said, let's exchange written discovery  
2 first. We did that.

3 But now I'm facing with a 30(b)(6) deposition on  
4 Monday, and I have no idea what I'm getting. Defense  
5 counsel -- or defendant rather has not told me what I'm  
6 getting, what the objections are.

7 And so, I think that the -- I am requesting that the  
8 Court rule on the objections.

9 THE COURT: Okay. Ms. Bertram, I have a question for  
10 you specifically about requests for admissions 25, 27 and 33.  
11 Do you have an objection to those? These are all admitting or  
12 denying that he made certain complaints on certain dates.

13 MS. BERTRAM: Your Honor, for 25, we submitted a  
14 supplemental response.

15 THE COURT: Okay. So, that one has been answered?

16 MS. BERTRAM: It has been answered. And --

17 THE COURT: And you made that without subject to a  
18 whole bunch of objections?

19 MS. BERTRAM: That's correct, we have admitted or  
20 denied.

21 THE COURT: Okay.

22 MS. BERTRAM: We'll see what we actually did --

23 THE COURT: 27.

24 MS. BERTRAM: For 27, we denied.

25 THE COURT: But you did answer?

1 MS. BERTRAM: We answered, yes.

2 THE COURT: Okay. And 33?

3 MS. BERTRAM: And 33 we denied.

4 THE COURT: Why didn't you answer that one?

5 MS. BERTRAM: We answered it, I'm sorry.

6 THE COURT: Oh, I'm sorry.

7 MS. BERTRAM: We answered it as a denial.

8 THE COURT: Okay.

9 MS. BERTRAM: What happened is Mr. Carter and I had  
10 conferred before Thanksgiving, and I told him that we -- that  
11 now that Mr. Hosch had identified through his deposition what  
12 he relied upon in making his claimed complaints, that we would  
13 be supplementing our --

14 THE COURT: Okay.

15 MS. BERTRAM: -- responses to the interrogatories.  
16 So, I --

17 THE COURT: What objections do you still have to the  
18 30(b)(6)? I wasn't quite sure.

19 MS. BERTRAM: On the 30(b)(6), really just centers on  
20 the scope of the topics that are included in it.

21 For instance, a couple of different categories that  
22 are objectionable. First of all, the first several requests,  
23 for instance, a witness to testify as to each and every  
24 document request and interrogatory response, which we think is  
25 inappropriate. They also request that we describe the basis

1 for every answer -- our answer to every allegation of the  
2 complaint and every affirmative defense, which is protected by  
3 the work product doctrine.

4 When you get into the substantive --

5 THE COURT: Well, it says all factual bases.

6 MS. BERTRAM: Those are, Your Honor -- there is a lot  
7 of case law addressing this that we cited in our briefing --

8 THE COURT: No, I mean, I don't think that it's  
9 necessarily asking for attorney/client or work product  
10 information. He's asking for the factual basis as to the  
11 affirmative defenses.

12 MS. BERTRAM: Right. And we did that yesterday, we  
13 had a deposition of one of the factual witnesses yesterday.  
14 And Mr. Carter went through the allegations of the complaint  
15 and asked him questions reading -- reading the factual  
16 allegations. And the witness responded to questions based on  
17 that. And we don't have any objection to that.

18 What our understanding of it -- of the scope of it  
19 was that we were being requested to describe why we had  
20 answered a certain way, which we thought implicated work  
21 product. We are certainly willing to answer the factual piece  
22 of it.

23 THE COURT: Okay.

24 MS. BERTRAM: And then we get into the issue that  
25 Your Honor raised, which is the scope --

1 THE COURT: Well, let me skip over. Are you  
2 objecting to 4 through 9?

3 MS. BERTRAM: Let me just pull up the --

4 THE COURT: Let's see, this is -- wait a minute. Why  
5 do I have two 30(b)(6) -- oh, this is the first and the second.  
6 Did they change?

7 MS. BERTRAM: They did not change.

8 THE COURT: Okay. So, I'm looking at the one for  
9 December 5, is that correct? Did you all change the date?

10 MR. CARTER: It's October 28.

11 THE COURT: I'm looking at the notice dated  
12 December 5. Is that the wrong one to look at?

13 MS. BERTRAM: It doesn't matter which one you look at  
14 because they're identical.

15 THE COURT: Okay.

16 MS. BERTRAM: Okay.

17 THE COURT: So, 5 -- 4 through 9, is there any  
18 objection to those?

19 MS. BERTRAM: We have an issue with 4 in terms of  
20 scope, 4 and 5 in terms of scope. If they just want general  
21 information about where the company looked for documents and  
22 what we produced, I don't think that's objectionable.

23 But the retention of all documents relevant to the  
24 subject matter seemed overly broad. It appears to be Mr.  
25 Carter's interpretation, and this came up in the deposition



1 yesterday, that we have an obligation to produce every document  
2 that has Mr. Hosch's name on it. Which, obviously, we don't.

3 So, there is kind of a basic dispute about what's  
4 relevant in this case. And Your Honor referenced a core issue  
5 earlier, talking about the scope of what Mr. Hosch knew and the  
6 underlying fraud.

7 So, to the extent that we are talking about what we  
8 produced and what we looked for, we don't have an objection to  
9 that. But I don't think we should be required to have someone  
10 testify as to every document at BAE Systems with Mr. Hosch's  
11 name on it.

12 THE COURT: Okay. What about -- let's go through the  
13 remainder, the remaining topics. What are your objections to  
14 those? Let's skip over 10. Go to 11. Really it's 11, 12 that  
15 go together.

16 MS. BERTRAM: Yeah, 11 and 12 we've already produced  
17 a witness, and they've testified fully --

18 THE COURT: Okay, so that's denied.

19 MS. BERTRAM: -- as to those topics.

20 THE COURT: All right. 13.

21 MS. BERTRAM: 13 was overly broad because it relates  
22 to every single piece of correspondence and workplace  
23 discussion between --

24 THE COURT: Right, okay.

25 MS. BERTRAM: -- the plaintiff and his supervisor.

1 And they communicated on a daily basis. We thought that was --

2 THE COURT: 14 is, let's see --

3 MS. BERTRAM: 14 is essentially the --

4 THE COURT: Regarding Hosch's performance, job  
5 responsibilities or disclosures.

6 MS. BERTRAM: We can produce somebody on that.

7 15 implicates the issue that we've been talking  
8 about.

9 And then with respect to 16 and 17, we're planning on  
10 producing a witness, but to testify more generally than the  
11 detailed listing of topics identified in 16.

12 THE COURT: Okay. All right. So, did you have  
13 anything else to add, Ms. Bertram?

14 MS. BERTRAM: Well, with respect to the -- the kind  
15 of core issue on discovery. You know, I actually don't think  
16 that Mr. Carter is going to be dissatisfied with our Rule  
17 30(b)(6) deponent on Monday. He made the comment that when we  
18 presented our first witness, he said she testified unfettered  
19 as to the topics. Some of the topics are overly broad. We're  
20 presenting the witnesses on the topics that we feel are  
21 relevant to the case. He has been satisfied thus far, and I  
22 think he will be satisfied on Monday. If he is not, we could  
23 have a call or discuss it, but I think he is going to be  
24 satisfied.

25 I think the core issue though where we still have a

1 dispute is this issue of the underlying fraud.

2 THE COURT: I understand. Do you have anything to  
3 add, Mr. -- I'm sorry, what was your name again? Mr. Carter.

4 MR. CARTER: Yes, ma'am. Just a point of correction.  
5 Yesterday was not a 30(b)(6) deposition. And, of course, Your  
6 Honor knows the quality of the evidence is very different. You  
7 need to know it's a 30(b)(6) when you're -- when you're taking  
8 it.

9 But I appreciate Your Honor intervening here because  
10 this is what I was trying to get from --

11 THE COURT: Okay.

12 MR. CARTER: -- Ms. Bertram that I was not able to.  
13 So, thank you.

14 THE COURT: All right. Well, as to your motion to  
15 compel, we're not going to get into you trying the case within  
16 a case. It's just not relevant, it's not going to happen.  
17 We're going to limit this to what he knew at the time and  
18 whether or not that was a reasonable basis for his complaint.

19 So, beyond what information he had and discovery  
20 related to what he says he had, which I understand you've now  
21 found during his deposition, we're just not going to go beyond  
22 that.

23 So, I'm not going to grant your motion to compel as  
24 to the discovery requests because the only three that I thought  
25 that were really at issue that should be answered by the

1 defendant have been now answered with the supplement.

2 Now, as to --

3 MR. CARTER: May I just seek a clarification on that,  
4 Your Honor?

5 THE COURT: Okay.

6 MR. CARTER: He did testify that he knew about  
7 certain things in his deposition. And if Your Honor is ruling  
8 then covers -- he knew about the contract, he knew about the  
9 timecards, we should be able to get the discovery of --

10 THE COURT: No, no.

11 MR. CARTER: When he said he knew about them?

12 THE COURT: Yeah, but you don't need to verify them  
13 through their discovery. If he had it -- if he had the  
14 information, then you're limited to that. But if you're asking  
15 about going back through there, that's what all of your  
16 discovery was related to, going back and then trying to prove  
17 that he was right. We're not going to do that.

18 MR. CARTER: I just mean -- I just mean when he was a  
19 BAE employee, he had the contract. Now he doesn't. But the --

20 THE COURT: Well, as I understood the answers from  
21 the -- in the plaintiff's opposition, you said that you did  
22 produce the documents that he said that he had at the time he  
23 made his decision, isn't that correct?

24 MS. BERTRAM: Your Honor, with respect to the  
25 contract, the plaintiff himself removed from BAE Systems and

1 then produced back to us a portion of the contract during his  
2 deposition. He clarified that he also had online access to  
3 what he characterized as the entire contract.

4 We have to get authorization from DIA to produce that  
5 contract, and we're going through that process. Other than  
6 that portion, everything else has been produced that he  
7 identified in his deposition.

8 THE COURT: Okay. So, why does he need the whole  
9 contract if he has already got part of at least, or I assume  
10 the relevant part?

11 MR. CARTER: Well, that's just it, I don't think we  
12 do have the relevant part. We have -- he testified that while  
13 at BAE he had the relevant part, but we do not have the  
14 contract with the billing categories, the charges, those kinds  
15 of things.

16 THE COURT: Okay. I'm going to make you produce that  
17 and be subject to counsel and just the plaintiff's eyes only,  
18 no one else, unless you have an expert. But I don't think -- I  
19 think if we put it under a sealing order, then the parties  
20 don't have to worry about it.

21 MS. BERTRAM: Right, Your Honor, we were going to ask  
22 for attorney's eyes only protection. So, that's perfect.

23 The only issue is DIA may itself impose some  
24 restrictions. So, we'll need to see what --

25 THE COURT: Well, I've got an order that I'm going to

1 enter --

2 MS. BERTRAM: Right.

3 THE COURT: -- that says you have to produce it.

4 MS. BERTRAM: Right.

5 THE COURT: So, it doesn't matter what they think.

6 MS. BERTRAM: Okay.

7 THE COURT: Okay.

8 MS. BERTRAM: Well, hopefully they'll -- everybody  
9 will be aligned on this.

10 THE COURT: Okay. Then as to the deposition topics,  
11 as to number 3, I'm going to limit that to the factual  
12 assertions made.

13 I'm assuming that as to number 4, he's really not  
14 going to get into -- and am I right here, Mr. Carter, that  
15 you're not going to get into anything other than where they  
16 searched for these files and where they normally are kept and  
17 that sort of thing?

18 MR. CARTER: Yes, ma'am.

19 THE COURT: Okay. So, I'm going to allow all that.

20 I'm not going to allow 10.

21 I'm not going to allow 13 as worded because it is  
22 entirely too broad. If you want to talk about in terms of what  
23 your trying to limit that to and you come to some agreement,  
24 that's fine. But as it stands, I'm not going to allow 13 as  
25 it's worded.

1 And 15 I'm not going to allow either.

2 The rest of it is going to be allowed.

3 MR. CARTER: The rest is going to be what? Sorry.

4 THE COURT: Pardon me? The rest will be allowed.

5 The rest of those categories will be allowed.

6 So, as to your motion to compel, it's granted in part  
7 as to the 30(b)(6) and denied in part.

8 MR. CARTER: And granted in part with respect to the  
9 contract?

10 THE COURT: Yes.

11 MR. CARTER: Thank you.

12 THE COURT: And I will note that.

13 Now, as to the defendant's motions to compel, do you  
14 have anything to add to those?

15 MS. BERTRAM: Your Honor, with respect to the  
16 forensic inspection, we had requested this routine -- requested  
17 this after we served discovery requests because we had  
18 information that the plaintiff had carried with him while he  
19 was in Afghanistan a computer or device that he used to  
20 download information to. And that he used a cell phone that is  
21 called a Roshan phone that was a personal phone, and he used  
22 that for BAE business, for texting and for phone calls.

23 In addition, when we -- when the BlackBerry, his  
24 company-issued BlackBerry was returned to us, it had been  
25 wiped. So, we requested a forensic inspection of the

1 computers. There were objections to that. We reissued the  
2 notice, gave additional time so that we could confer. And we  
3 were repeatedly told no, no, no, no.

4 When we took the plaintiff's deposition on  
5 November 4, the plaintiff testified that he routinely forwarded  
6 BAE company e-mails to his personal e-mail account. He said it  
7 was so routine that he didn't even look at them, he just  
8 started forwarding every e-mail to his personal e-mail account.

9 This is relevant to the claims because a lot of these  
10 e-mails relate to the claims. In addition, it relates to our  
11 McKinnon defense based on his violations of our company  
12 policies and theft of our documents.

13 In addition, he said he had a practice of taking  
14 notes in a notebook and then after the meeting he would go back  
15 to his military-issued computer, draft an e-mail or a summary  
16 of those notes, shred the notes, and then he saved the e-mail  
17 or the summary into a file on that computer called BAE  
18 Concerns.

19 Then when he was requested to transfer to another --  
20 to another region as a disciplinary matter, he started  
21 undertaking steps to go on medical leave and go back to the  
22 United States. And at that point he says that he copied onto  
23 this personal drive or personal storage device that he had with  
24 him all the e-mails that he had saved, the Word documents, and  
25 then everything, quote, everything he had on his desktop on the



1 military computer. And then took that back to the United  
2 States with him.

3           There are a lot of discrepancies in the production  
4 that lead us to believe that not everything has been produced  
5 and to lead us to want to inspect the Roshan, the storage  
6 device, and Mr. Hosch's other computers.

7           And the -- interestingly, this personal drive was not  
8 identified by the plaintiff in his responses to interrogatory  
9 number 17. We only found out about it through pressing him  
10 during the course of his deposition.

11           And we think that it's very significant that  
12 throughout this whole process when he was downloading and  
13 making memos to file and copying items to his drive, that he  
14 anticipated litigation with the company. He had told  
15 co-workers throughout his employment with BAE Systems that he  
16 was planning to sue the company, that he wanted to bring the  
17 company down, and apparently was collecting evidence, and  
18 admitted that in his deposition. He said, this was evidence,  
19 that's why I forwarded it to my personal e-mail account, and  
20 that's why I put it in this file, and that's why I downloaded  
21 it.

22           In addition, he did file complaints while he was  
23 employed with the company with the company's ethics line and  
24 then with the Department of Defense IG's Office. And he said  
25 in his DoD complaint that he planned to pursue additional

1 remedies.

2 So, he had an obligation to preserve this evidence  
3 and not to spoliage. And I think there is enough activity and  
4 the lack of production that we've shown through our papers,  
5 that a forensic inspection is more than warranted.

6 THE COURT: All right. Mr. Carter, as I understand  
7 it also, it was -- he testified in his deposition that he  
8 destroyed some of the documents on his personal computer?

9 MR. CARTER: No, Your Honor, that's not exactly  
10 right. What he testified to was that he cleaned up the folder  
11 that's on the Share Point at the Army. It's the Army  
12 documents. And that he had access to a Share Point, and that  
13 before turning it over, he got rid of extraneous stuff, things  
14 that were personal, things that, you know, he didn't need to  
15 keep when turning it over to his successor. That's what he  
16 testified about.

17 He didn't testify or admit to destroying anything.  
18 And indeed, the contrary is true. He, as Ms. Bertram points  
19 out, he did retain his copies. After taking his handwritten  
20 notes, he transposed them and preserved them. This was all  
21 prior to his being terminated.

22 He did make complaints to the company ethics and to  
23 DoD IG, but he told company ethics that he had no reason to sue  
24 anybody. Of course, they hadn't terminated him yet.

25 So, the only thing that he says that he "destroyed"

1 was the -- what he said was in the ordinary course of business  
2 cleaning up a file to take out old versions of documents when  
3 the most recent versions were there, that kind of thing.

4 With respect to the motion at bar, there is nothing  
5 to produce. I can tell you --

6 THE COURT: Well --

7 MR. CARTER: He has this --

8 THE COURT: Okay.

9 MR. CARTER: He has this external drive that we asked  
10 him as his counsel to use to download everything that was in  
11 his personal e-mail so that we would have a full copy,  
12 electronic copy. And the only things that we have not produced  
13 are the subject of the other motion that's before the Court.

14 THE COURT: Okay. Let me go ahead and deal with that  
15 then. Ms. Bertram, I understand your motion. My question is  
16 as to the prior employment because, as I understand it, the one  
17 issue that would be of question with regard to his prior  
18 employment you also investigated jointly, is that correct?

19 MS. BERTRAM: Your Honor --

20 THE COURT: Prior to his being employed by you.

21 MS. BERTRAM: Apparently there were several incidents  
22 when he was at SAIC. Only the last one was jointly  
23 investigated by us.

24 THE COURT: Why are the prior ones relevant?

25 MS. BERTRAM: Your Honor, I think they show a pattern

1 of conduct that's relevant to, you know, his knowledge and  
2 understanding in terms of the reasonableness of his belief.

3 When Mr. Hosch left the military, he went almost  
4 immediately into working in the Middle East for government  
5 contractors. So, he has worked on similar contracts throughout  
6 his private employment.

7 And he worked on our contract, the BAE Systems CIED  
8 contract, as a subcontractor for SAIC. He relies on events  
9 that occurred while he was at SAIC to support his complaint.  
10 And in fact, requested from us documents from that time period  
11 in support of his claims.

12 I don't think that he can request those documents,  
13 use those documents, and then deprive us of all of the  
14 documents relating to his employment with SAIC and with  
15 subsequent contractors.

16 And, you know, a lot of these contracts are -- are  
17 structured similarly. They are with a lot of the same entities  
18 and agencies. And that forms the base of knowledge that Mr.  
19 Hosch had in assessing the reasonableness of his claimed belief  
20 that the company was engaging in fraud by misclassifying  
21 employees or asking them to work outside of the scope of their  
22 classification.

23 And so, if he was working on the contract and while  
24 he was at SAIC, for instance, he recommended that an analyst  
25 named Marilsa Santiago be hired because he felt that she was

1 qualified to be a Sydney operator, that occurred at SAIC, he is  
2 now claiming that her being assigned as a CIDNE operator is  
3 fraudulent.

4 So, the events that occurred back at SAIC are clearly  
5 relevant to what's happening now. And the experiences that he  
6 had at other contractors with the assignment of personnel and  
7 such are also material.

8 And, you know, if -- I don't know what he was  
9 disciplined for at SAIC. I have a partial production at this  
10 point from SAIC, and it does appear that there were several  
11 incidents where he was disciplined and counseled. And if he  
12 was counseled about similar incidents to those that led to his  
13 termination or that relate to the bases for his allegations of  
14 fraud, those would be relevant.

15 In addition, and I think this is probably the most  
16 significant, if you look at his expert report, his experts rely  
17 on his history of employment as -- in computing his \$2 million  
18 in back pay and front pay that he seeks. And again, he can't  
19 be permitted to use that evidence affirmatively in order to  
20 bolster and support his damages claims while at the same time  
21 depriving us of discovery concerning prior employers.

22 And if you think about it, Your Honor, you know, for  
23 this particular category, we're just asking him to provide the  
24 files that he has in his possession, custody, or control  
25 relating to prior employment.

1 I don't anticipate that there is a large volume that  
2 he has, but he's declined to produce any of those.

3 We also need a release to obtain records from the  
4 prior employers. That's our burden, and we'll go and get the  
5 records.

6 So, you know, it is a minimal burden in order for us  
7 to discover relevant evidence that will be relevant to rebut  
8 their damages claims, potentially challenge the reasonableness  
9 of his belief, and, quite frankly, potentially establish a  
10 McKinnon defense based on certain representations that were  
11 made to the company in his application.

12 THE COURT: All right, thank you.

13 Do you have anything to add, Mr. Carter, as to any of  
14 the plaintiff's motions?

15 MR. CARTER: Just quickly.

16 MS. BERTRAM: And I had a little more, Your Honor, if  
17 you wanted to hear it on the medical evidence.

18 THE COURT: I will let him address this first.

19 MS. BERTRAM: Okay, thank you.

20 MR. CARTER: I'm struggling with how the timecards of  
21 the actual contract at issue could not be relevant. And then  
22 his prior employment which he said he didn't rely on, except he  
23 has referred generally to his many years of experience is  
24 relevant for his good faith belief.

25 But the fact is, and I have said this to counsel, is

1 that he does not have anything else in his possession of Day  
2 and Zimmerman or SAIC, any of those documents to produce. Nor  
3 do I think should he be required to sign a release to make them  
4 produce them.

5 And what is very important is what goes along with  
6 that is that every time you get sent to Afghanistan by a  
7 contractor, they do a full medical workup. And in that full  
8 medical workup that would be in your file would be all of the  
9 medical documents, psych history and that sort of thing, that  
10 we're opposing.

11 With respect to what the experts have relied on, Ms.  
12 Bertram has everything that our experts have relied on. They  
13 rely generally on when you do a vocational rehabilitation  
14 assessment, you look at the resumé. I mean, you just -- that's  
15 what he relied on. The defendant has that.

16 With respect to the -- what Ms. Bertram just said  
17 about Ms. Santiago being a CIDNE operator, he said she would be  
18 able to be a CIDNE operator if trained. Not that she was one.  
19 They knew -- they hired her knowing that she was not a CIDNE  
20 operator or trained to be one.

21 So, it's really the scope of what we're talking about  
22 here is 20 years of psychological history, 20 years of prior  
23 employment history.

24 I've represented in my papers, I've got no problem  
25 producing the post-BAE medical history other than the

1 psychological test that he has to do every year because he is a  
2 disabled veteran. I don't think that's relevant.

3 The mitigation documents I'm prepared to produce. I  
4 didn't know that -- other than the mitigation log, this is the  
5 first we're learning that we need to produce the actual online  
6 applications and all of those other things. But again, I want  
7 it to be clear that that would not include the medical workup  
8 for my client.

9 THE COURT: All right. You know, one thing that  
10 concerns me is why these motions are coming so late, to tell  
11 you the truth, especially the forensic exam. How quickly can  
12 that be done, Ms. Bertram?

13 MS. BERTRAM: It can be done very quickly, Your  
14 Honor. We could send a forensic expert to Mr. Hosch's home.  
15 And it typically takes about half a day to do the imaging  
16 process. And the review process usually takes a matter of  
17 days.

18 This is not a big, given advancements in technology,  
19 this is not a big elaborate process. We did not become aware  
20 of -- obviously, we had suspicions and had concerns when we  
21 made the initial request for a psychiatric -- I'm sorry. For a  
22 forensic review. Those concerns were really exacerbated on  
23 November 4 at plaintiff's deposition when he talked about going  
24 in and downloading all of these documents off the military  
25 computer and deleting certain documents and such.



1           And then -- and then when we got third-party  
2 productions in and saw that there were a lot of documents that  
3 were not being produced to us that were at least at one point  
4 on plaintiff's personal e-mail, I conferred with Mr. Carter.  
5 There were some challenges scheduling this hearing in terms of  
6 with the holiday last week and then Mr. Carter was not  
7 available the Friday before that. We had hoped to schedule  
8 this for two weeks before today.

9           THE COURT: All right. Well, I find that the  
10 plaintiff has put his physical and mental health clearly at  
11 issue in this case. And so, I am going to grant the motion to  
12 compel as to that.

13           As far as the SAIC and prior employment history, I'm  
14 not sure that it's going to be admissible, but I think at this  
15 point there is enough of an issue here as to what he knew and  
16 how that impacted his claims against BAE, that what he knew  
17 during his employment, his prior employment with SAIC, and what  
18 he was disciplined for there and so forth, is at issue at this  
19 point. So, I'm going to allow that as well.

20           And as far as the forensic examination is concerned,  
21 I think there is a legitimate issue here as to whether or not  
22 what he has provided is everything. And he has, you know,  
23 admitted to taking stuff off of his work computer, putting it  
24 on his home computer and then -- you know, and cleaning it up  
25 here or there. I am not sure where he did.

1 But I think that there is a real issue here as to  
2 whether or not he's produced everything that he says that he's  
3 downloaded. I've run into this before in similar cases, and I  
4 think that it's appropriate that they be allowed to  
5 forensically investigate his computer, electronic devices, and  
6 online accounts.

7 So, I'm going to grant both of the defendant's  
8 motions in whole.

9 Now, you have a discovery cutoff coming up in a week  
10 and you have got a final pretrial conference after that. So, I  
11 am not going to move that at all, but I will give you until the  
12 end of the month to -- what I will do is give you until the end  
13 of the month, to the 31st, to exchange your pretrial  
14 submissions.

15 And if you need to schedule a couple of depositions  
16 or something like that to clean things up within that last  
17 couple of weeks, I'll allow you to do that. It sounds like  
18 maybe you're through with that.

19 But exchange your pretrial submissions then on the  
20 31st. And objections would be due seven days after that.  
21 Okay?

22 MS. BERTRAM: Okay.

23 THE COURT: Are there any other issues?

24 MR. CARTER: Your Honor, just a question. When we  
25 talk about a forensic review, we've run into this before, there

1 is obviously issues of privilege. So, I am not sure how --

2 THE COURT: Well, I thought he only had his work  
3 things on here?

4 MR. CARTER: Well, that's --

5 THE COURT: No, he's got other stuff as well?

6 MR. CARTER: That's the point, is that --

7 THE COURT: Okay. I'll allow counsel to be present  
8 during the forensic examination, and then you all can earmark  
9 anything that you think is privileged. If you can't come to an  
10 agreement about what is privileged, then you can bring a motion  
11 before me as to that.

12 But I will allow you to be present during the review  
13 so that you can perhaps iron that out. It may make sense for  
14 both of you to be there during the review so you can just  
15 eliminate anything that is obviously privileged, e-mails  
16 between counsel and plaintiff, and so forth. Okay.

17 MR. CARTER: Thank you.

18 MS. BERTRAM: Your Honor, I had one small issue --

19 MR. CARTER: Oh, I'm sorry, before we leave that. My  
20 client is in Afghanistan, so it's not a matter of sending  
21 somebody to North Carolina for half a day. It's -- I frankly  
22 don't know what he has got with him and where either one or  
23 both of the devices at issue are.

24 And I further believe that the Roshan phone is like  
25 an iPhone which doesn't have -- everything is up in a cloud.

1 It's not on the device itself.

2 So, there are issues here, technical in nature, that  
3 we have. But again, if this is what the defense wants to do  
4 and Your Honor is ordering it -- I just am making these points.  
5 There are going to be issues about getting access to the  
6 devices if it's one that he's not even using --

7 THE COURT: Well, he could ship them -- he could ship  
8 them back here.

9 MR. CARTER: Right.

10 THE COURT: That might make the easiest thing to do,  
11 have him ship them back here for review, and then you can be  
12 there when the -- when the forensic exam is made.

13 MR. CARTER: Okay. I'm not sure that's the device at  
14 issue, but, okay, we'll --

15 THE COURT: Well, I would think he could do it with  
16 regard to all of these, whatever is over there, couldn't he?

17 MR. CARTER: Certainly with whatever is over there.

18 THE COURT: Right.

19 MR. CARTER: If there is something in North Carolina  
20 where he is not there, I don't know how to get access to that.

21 THE COURT: Well, he's going to have to figure out  
22 something.

23 MR. CARTER: We'll figure that out. Thank you, Your  
24 Honor.

25 THE COURT: Okay.

1 MS. BERTRAM: I think that your -- first of all, I  
2 wanted to clarify timing. You had indicated that something was  
3 due within seven days, and I just missed what you said.

4 THE COURT: Objections to your pretrial submissions.

5 MS. BERTRAM: Okay.

6 THE COURT: Will be due seven days afterwards. So,  
7 January 7. I'm hoping that's a weekday. I think it is.

8 MS. BERTRAM: Okay. And --

9 THE COURT: And then otherwise everything that I've  
10 ordered to be produced with regard to these, to the motions to  
11 compel, really should be done within a week or so.

12 MS. BERTRAM: Right. Okay. We understand.

13 THE COURT: Okay.

14 MS. BERTRAM: We had an issue come up last night. We  
15 received a declaration from a witness, and we were going to ask  
16 for leave to take his deposition. But since you've said we can  
17 take depositions through the end of the month --

18 THE COURT: I will allow you to just do that.

19 MS. BERTRAM: Yeah.

20 THE COURT: I am not going to worry about if you get  
21 them in sometime before the end of the year.

22 MS. BERTRAM: Okay.

23 THE COURT: Okay.

24 MS. BERTRAM: Great. Thank you so much.

25 THE COURT: All right, thank you.

1 MR. CARTER: Thank you, Your Honor.

2 NOTE: The hearing concluded at 10:55 a.m.

3 -----

4  
5 C E R T I F I C A T E o f T R A N S C R I P T I O N

6  
7 I hereby certify that the foregoing is a true and  
8 accurate transcript that was typed by me from the recording  
9 provided by the court. Any errors or omissions are due to the  
10 inability of the undersigned to hear or understand said  
11 recording.

12  
13 Further, that I am neither counsel for, related to,  
14 nor employed by any of the parties to the above-styled action,  
15 and that I am not financially or otherwise interested in the  
16 outcome of the above-styled action.

17  
18  
19  
20  
21  
22 /s/ Norman B. Linnell

23 Norman B. Linnell

24 Court Reporter - USDC/EDVA

# EXHIBIT B

<p style="text-align: right;">Page 74</p> <p>1 Q Do you know why he shredded it?</p> <p>2 A That's -- that's the protocol for it.</p> <p>3 You know, once you get your hand receipt back, the</p> <p>4 original, you shred it.</p> <p>5 Q When did you physically give up the space</p> <p>6 in the Pink Palace?</p> <p>7 A Physically it was -- without looking at</p> <p>8 the e-mails -- I would have to look at the actual</p> <p>9 e-mail traffic to verify the exact dates, but I'm</p> <p>10 thinking around the first or the second week of</p> <p>11 May -- when I was identified that I was basically</p> <p>12 going to RC-North, whenever that date was, that's</p> <p>13 when I closed out the final one because I had a</p> <p>14 couple of things that he was going to let Oscar keep,</p> <p>15 but we never linked up, so...</p> <p>16 Q And what were the items that Mr. Smith</p> <p>17 was going to allow Mr. Denson to keep?</p> <p>18 A What I remember right offhand was two</p> <p>19 printers. I don't know all the items that was on</p> <p>20 that list. I'd have to go back and look at some</p> <p>21 e-mails or something.</p> <p>22 Q And what -- what do you mean when you say</p>	<p style="text-align: right;">Page 76</p> <p>1 time. That was strictly from a personal standpoint</p> <p>2 that he allowed me to use those items.</p> <p>3 Q And you had actually met with Mr. Denson</p> <p>4 several times prior to -- prior to the point where</p> <p>5 you were trying to coordinate with him regarding the</p> <p>6 hand receipt, correct?</p> <p>7 A Now, when you say "meet with him,"</p> <p>8 what -- what are you referring to?</p> <p>9 Q You met with him in person regarding</p> <p>10 transition of the region, correct?</p> <p>11 A Yes. We met with the transition of the</p> <p>12 region on one day.</p> <p>13 Q Okay. What date was that?</p> <p>14 A The exact date -- I would have to look at</p> <p>15 the actual traffic. But what I can recall from</p> <p>16 memory now is either -- I'll give you the whole time</p> <p>17 frame. From the 2nd to the 3rd, me and Oscar Denson</p> <p>18 were supposed to go through the transition of</p> <p>19 authority. It was complete on 4 May of 2012.</p> <p>20 Q And did you and Mr. Denson meet on the</p> <p>21 2nd or the 3rd?</p> <p>22 A I would have to go back through the</p>
<p style="text-align: right;">Page 75</p> <p>1 that Mr. Denson and you couldn't link up?</p> <p>2 A Well, I sent Mr. Denson a number of</p> <p>3 e-mails, phone calls, even visited the office space</p> <p>4 that he was assigned to, and he never would return my</p> <p>5 calls. We never had an opportunity to finish up the</p> <p>6 last hand receipt.</p> <p>7 So at that point, I transferred</p> <p>8 everything back over to the government since I could</p> <p>9 not get in touch with him. Not the government</p> <p>10 customer but Mr. Smith.</p> <p>11 And when he got everything back, you</p> <p>12 know, then that was it. You know, Oscar never tried</p> <p>13 to meet up with me to get those items.</p> <p>14 Q Now, if he had met with you, what would</p> <p>15 he have received, based on your understanding?</p> <p>16 A What he could have -- he would have had</p> <p>17 to talk to Mr. Smith about everything that he was</p> <p>18 willing to -- to let Oscar have. But I do know the</p> <p>19 two printers -- he had additional printers, but he</p> <p>20 would have to talk with him, and he may have helped</p> <p>21 him out. But he was not obligated in any way at all</p> <p>22 to provide anything to Oscar or BAE Systems at that</p>	<p style="text-align: right;">Page 77</p> <p>1 e-mails to see the exact date that we actually sat</p> <p>2 down. But what we do during that transition, we sit</p> <p>3 down; we basically -- I took him around to all the</p> <p>4 locations where he needed to go for vehicle</p> <p>5 registration. I took him to the -- what is called</p> <p>6 the CJ2-J6. That's what gives you your authorization</p> <p>7 to use internet access and to access any accounts</p> <p>8 that we had set up. It also gave him an</p> <p>9 authorization to get into the actual gates in the</p> <p>10 compound where we worked at. So I took him to the</p> <p>11 security office also. I also took him to meet the</p> <p>12 government customer, which was Major Tobias and</p> <p>13 Lieutenant Colonel Mills in the CJ2 office on Bagram.</p> <p>14 After we did all that, me and Mr. Denson,</p> <p>15 we went and had -- I had a telephone conference set</p> <p>16 up with all of our personnel. Prior to that</p> <p>17 telephone conference, I gave Mr. Denson a copy of all</p> <p>18 the personnel documents, to include the location of</p> <p>19 all those personnel.</p> <p>20 I took him on the computer and showed him</p> <p>21 the SharePoint folder that I had created to just help</p> <p>22 me manage the particular region. This was not a BAE</p>



<p style="text-align: right;">Page 78</p> <p>1 directive. All the regions did not have it. It was  2 an item that I used to manage personnel. And I was  3 leaving all this for him.  4 However, I told him that I did not have  5 any administrative rights; that he would have to go  6 to the CJ6. And that's the communication help desk  7 for all computers and networks. He would have to go  8 there to establish a password that would allow him to  9 log on and enter any shared drives that they have on  10 that particular system.  11 So he had a copy of all the documentation  12 that he needed to operate RC-East until he got -- and  13 log on to go there himself.  14 After that, me and Mr. Denson, we  15 basically set up a telephone conference with all the  16 team leads for all the personnel for Regional Command  17 East. So as me and Mr. Denson sat at my desk -- he  18 sat in my seat, which was the main seat there; I sat  19 in the alternate seat which was closer to the wall  20 right under the air conditioning -- and what we did  21 was that we started to talk to all the team leads.  22 All the team leads had called in to what</p>	<p style="text-align: right;">Page 80</p> <p>1 sent out to all the regional managers.  2 So we had both of those documents and  3 went down all the individuals for RC-East with the  4 team leads to ensure that we had 100 percent  5 accountability of all our personnel at every location  6 for Regional Command East during that transition.  7 Q And the manning document is something  8 that was unique to your region; is that right?  9 A The actual manning document -- it's two  10 different ones. The one that I used to manage my  11 personnel, I just had up top Regional Command East.  12 Is that the one you're talking about?  13 Q Well, you said that the two of you used  14 two different documents, what you called a manning  15 document, and then the BAE CUP document.  16 So I was asking about the manning  17 document. Is that something that --  18 A That was internal to my region. I set  19 that up myself.  20 Q Okay. And what was the name -- what did  21 you refer to that document as?  22 A My manning document -- RC-East's manning</p>
<p style="text-align: right;">Page 79</p> <p>1 is called Adobe Connect. After we verified that all  2 the team leads were present, I told all the team  3 leads that I will be departing going to RC-North. I  4 told them that Oscar Denson would be taking over as  5 the regional manager for Regional Command East.  6 At that time me and Mr. Denson went  7 around to all the team leads. And what we were  8 looking for by communicating with all the team leads  9 in this venture was to -- for them to give us  10 100 percent accountability that all personnel that  11 were on the personnel manning document were a  12 hundred percent accounted for, and they were at their  13 location or they were on R&amp;R, which is relax and  14 recovery PTO.  15 So at that time we went to every team  16 lead. Every team lead -- as the individuals went  17 through the manning document of all of their  18 personnel, myself and Mr. Denson, we went person for  19 person that was assigned based on the manning  20 document that I maintained and based on the BAE  21 Systems CUP. That's a manning document that the PMO  22 office and that Jack -- that Dan Weber maintained and</p>	<p style="text-align: right;">Page 81</p> <p>1 document.  2 Q And you said that you provided copies of  3 documents to Mr. Denson. Were you referring to the  4 manning document and the CUP document?  5 A Yes. I provided him -- it was two  6 different types of documents I provided. I provided  7 him with a digital copy that was sent through e-mail,  8 and I also provided him a hard copy that was  9 basically given him -- to it in his hand.  10 Q And the documents, the digital copies  11 that you provided to him, were they the same  12 documents that were on the SharePoint?  13 A Yes. It was all the documents that he  14 needed for RC-East. Every single document. It was  15 the leave tracker, talks about all the people that's  16 on R&amp;R that have requested R&amp;R or that is scheduled  17 to go.  18 It also included all the manning, meaning  19 the location of all our personnel. It included any  20 reports that we had to turn in, where those are  21 actually kept. However, in order for him to get  22 those documents, he had to go up and finish</p>